No. 974 & 975
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In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES, APPELLANT,
v.
ALEXANDER MURPHY & CO. } No. 974.

REPLY BRIEF FOR APPELLANT ON APPLICATION FOR A WRIT OF CERTIORARI

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The undersigned respectfully begs to call the court's attention to certain misstatements contained in the first point in the brief filed on behalf of the importers in opposition to their application for a writ of *certiorari* herein.

It is hardly necessary to notice the statement, which, as I am informed, is unfounded, that the amount involved in a tariff controversy is customarily, or ever, assigned to this court on behalf of the Government as a reason for deciding the controversy in its favor.

The importers' counsel, however, go further, and attempt to lead this court into the erroneous belief that the amount involved in the present controversy is no

greater than is ordinarily or frequently involved in such cases; the object evidently being to create a fear lest granting a hearing to the Government upon this application would be a precedent which would restore tariff litigation to this court to an embarrassing extent. This case is stated to be "an excellent application of the proposition" that "if the largeness of the amount involved is to be regarded as a ground" for writs of *certiorari*, "practically every revenue case will have to come here, as the amount involved is large in almost every instance;" that "if the courts of appeals cease to be final tribunals in revenue cases, as the statute has made them, all the aforesaid cases will have to come to this court."

It is the belief of the undersigned that this court should not be asked to grant writs of *certiorari* except in cases of great importance to the Government; that in other cases, no matter how erroneous may be the decisions of inferior tribunals, they should be considered as final.

Consequently, in the rare cases in which applications for writs of *certiorari* are made, the importance of the question, as well as the reasons for considering the decision below to be erroneous, should be set forth in the application.

Cases approaching the present in magnitude of the amount involved are very rare indeed. In many decisions of circuit courts of appeals amounts are indirectly involved which would be regarded as considerable by private litigants. Very rarely, however, do they approach even a fourth part of the amount involved in the present case.

In the three years and a half which have elapsed since this court decided that customs cases could no longer be brought here as of right, the Government has asked but six times for a writ of *certiorari*, as the undersigned is informed. These six applications are as follows:

October term, 1893, *United States* v. *Allen*. The application was granted, and the case is No. 337 on the present docket.

October term, 1893, *The Steam Yacht Conqueror* v. *Vanderbilt*. The application was granted, and the case is No. 367 on the present calendar.

October term, 1894, *Saltonstall* v. *Birtwell*. The application was granted, and the case is being now for the second time argued.

October term, 1894, *United States* v. *Merck*. This case involved the question, What is a manufactured as distinguished from an unmanufactured article? a question continually recurring in the Treasury Department in various ways, and upon which this Department desired further judicial light.

October term, 1895, *United States* v. *Harden*. This case involved an unusually large amount pecuniarily, although the amount was small in comparison with the case now presented. It also involved principles of statutory interpretation, in which the assistance of this court was desired.

The present is the sixth application. The court is respectfully urged to consider it upon its merits for two reasons: First, that the amount involved is large enough to make the case one of exceptional importance to the

Government; and second, because the ground of the decision below, while plausible, is extremely technical, and, as the undersigned believes, absolutely inconsistent with all true principles of statutory construction.

Respectfully submitted.

JUDSON HARMON,
Attorney-General.